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IN THE HIGH COURT OF KARNATAKA AT BANGALORE

Dated this the 4th day of June, 1998

BEFORE

THE HON'BLE MR. JUSTICE V.P. MOHAN KUMAR

WRIT PETITION NO. 10778 OF 1994

BETWEEN :

I. Mahabala Shetty
Major,
Residing at Syadhri Colony,
Sirsi, Yellapura Road,
North Kanara District

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.. PETITIONER

(Sri B. Manohar for
M/s Shetty & Hegde Associates,
Advocate for petitioner)

A N D :

1. The Deputy Commissioner
North Kanara District,
Karwar
2. The Karnataka State
Appellate Tribunal,
M.S. Building, Bangalore,
by its Secretary
3. The State of Karnataka
by its Revenue Secretary,
M.S. Building, Bangalore - 1

.. RESPONDENTS

(Sri T.P. Nambiar, A.G.A. for R -1 to 3)

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Writ Petition filed under Article 226 & 227 of the Constitution of India, praying to; Issue an order, direction or writ in the nature of writ of certiorari or any other appropriate order, direction quashing the order ANNEXURE - A dated 21.12.1993 made in appeal 580/89 passed by the second respondent and order ANNEXURE - B dated 16.8.89 made in No. LND 1D SR/131/83, 84 passed by the first respondent; Issue an order or direction or writ in the nature of mandamus or any other appropriate order or direction directing the first respondent to grant the land measuring 36 guntas 4 Annas in Sy.No. 96 (96/126) situated in Sirsi village Uttara Kannada District in favour of the petitioner, etc.

This Writ Petition coming on for Hearing, this day, the Court made the following :

O_R_D_E_R

An extent of 1 acre 33 guntas of land in Sy.No. 96/126 of Sirsi village in Uttara Kannada District is alleged to be available for grant. The petitioner applied for grant of 34 guntas on 1-12-1982. On the same day another person by name Liberty Anthony Vaz also made an application for grant of the entire

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entire extent. Both the applications were rejected by the Deputy Commissioner by his order issued on 1-12-1983. The petitioner claimed to have filed a review. That review was allowed on 30-5-1984 granting him 34 guntas of land. Liberty Anthony Vaz also filed a review application. That was rejected by the Deputy Commissioner. Against the rejection of his application, he filed an appeal before the Karnataka Appellate Tribunal in Appeal No. 633/84. He challenged the rejection of his application as also the grant of the land in favour of the petitioner. Subsequently he filed a memo restricting the appeal to the rejection of his application. Nevertheless, the Tribunal took the appeal and set aside both the orders, i.e., the order granting the land in favour of the petitioner, and the order rejecting the application of Liberty Anthony Vaz. The matter was remitted back to the Deputy Commissioner for fresh disposal. After remittal, by order dated 16-8-1989, the Deputy Commissioner rejected the applications

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applications of both the petitioner and Liberty Anthony Vaz. This order was challenged in appeal by the petitioner, challenging the rejection. By the impugned order dated 21-12-1993, his appeal was dismissed. That order is challenged by the petitioner in these proceedings.

2. I have heard Mr. B. Manohar, learned counsel for the petitioner. When the total extent of land available for grant is only 1 acre 33 guntas and an extent of 34 guntas is carved out and granted to the petitioner, and the stand taken by Liberty Anthony Vaz was not challenged in appeal, there was no occasion for the Deputy Commissioner to reconsider the whole issue. What should have been done by the Deputy Commissioner was that he should have examined the question as to whether the petitioner's claim for grant is genuine and passed the orders after hearing him. The grievance of the petitioner is that he

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he did not have an effective opportunity of being heard. I, therefore, hold that there was no necessity for the Appellate Authority to have set aside the entire order and remanded the matter for fresh consideration. The proper course was to consider the extent to be granted to the applicant Liberty Anthony Vaz in view of his application. When the authority finds that the entire extent could not have been granted, the claim of the petitioner for grant of 34 guntas should have been considered. This was not considered in the impugned order. Therefore, Annexures - A and B orders are set aside. The 1st respondent is directed to take back the application of the petitioner for grant of 34 guntas of land, to his file and pass fresh orders, if necessary, after conducting a local inspection. I also make it clear that since Liberty Anthony Vaz has not pursued the present proceedings and challenged the orders Annexures - A and B, it may not be necessary to issue notice to him. The writ petition is disposed of as above.

Sd/-
JUDGE

